

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PATRICIA S. JONES and DEPARTMENT OF HOUSING & URBAN
DEVELOPMENT, OFFICE OF FAIR HOUSING & EQUAL OPPORTUNITY,
Fort Worth, TX

*Docket No. 98-2565; Submitted on the Record;
Issued February 24, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant is entitled to a schedule award under 5 U.S.C. § 8107 based on her accepted lumbar injury.

On February 3, 1995 appellant, a 38-year-old program assistant, injured her lower back while bending over to extract paper from a copying machine. Appellant filed a claim for benefits on February 6, 1995, which the Office of Workers' Compensation Programs accepted on March 22, 1995 for lumbar strain.

On May 1, 1998 appellant filed a Form CA-7 claim for a schedule award based on her accepted lumbar injury. In support of her claim, appellant submitted a March 19, 1998 report from Dr. Jim W. Czewski, an osteopath, who after testing appellant's range of motion, reviewing her medical history, and stating findings on examination, rated appellant for a five percent impairment to the body as a whole and to the spine, pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (fourth edition).

In a memorandum dated July 20, 1998, an Office medical adviser found that Dr. Czewski's impairment rating did not constitute probative medical evidence for an award under the schedule, as it was based on an abnormality of the spine.

By decision dated July 22, 1998, the Office denied appellant compensation, finding that an injury to the lumbar spine was not covered under section 8107 of the Federal Employees' Compensation Act, and that she therefore was not entitled to an award under the schedule for permanent partial impairment.

The Board finds that appellant is not entitled to compensation under section 8107 of the Act based on her accepted lumbar injury.

In the instant case, appellant submitted Dr. Czewski's March 19, 1998 report in support of her claim for an award under the schedule for a permanent partial impairment based on the accepted injury to her lumbar spine. Dr. Czewski's report indicated that appellant had a five percent impairment to the body as a whole and to the spine based on the A.M.A., *Guides* (fourth edition).

The Board, however, notes that no schedule award is payable for permanent loss of, or loss of use of, specified anatomical members or functions or organs of the body not specified in the Act or in the implementing regulations.¹ As neither the Act nor the regulations provide for the payment of a schedule award for the permanent loss of use of the back or the body as a whole,² no claimant is entitled to such an award.³ The Board therefore finds that appellant is not entitled to compensation for a permanent partial impairment based on her accepted lumbar injury.⁴

Accordingly, the July 22, 1998 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.
February 24, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

¹ *William Edwin Muir*, 27 ECAB 579 (1976) (this principle applies only to body members that are not enumerated in the schedule provision as it read before the 1974 amendment, and to organs that are not enumerated in the regulations promulgated pursuant to the 1974 amendment); *see also Ted W. Dieterich*, 40 ECAB 963 (1989); *Thomas E. Stubbs*, 40 ECAB 647 (1989); *Thomas E. Montgomery*, 28 ECAB 294 (1977).

² The Act itself specifically excludes the back from the definition of "organ." 5 U.S.C. § 8101(19); *see also Rozella L. Skinner*, 37 ECAB 398 (1986).

³ *George E. Williams*, 44 ECAB 530 (1993).

⁴ The Board also rejects appellant's contentions on appeal that he is entitled to benefits for future worsening of his condition and for based on pain and suffering, neither of which are compensable under the Act.